

**REMARKS**

Claims 12 and 15-22 are currently pending in this application. By this amendment, claims 12, 15, 16, 18, and 19 are amended for the Examiner's consideration. In particular, claim 12 has been amended to overcome the cited prior art by specifying that the "drug delivery mouthpiece is structured and arranged such that a patient's breathing generates an air flow that follows the air flow path defined by the hollow body and the baffle to deliver a medicament to the patient." Claims 15, 16, 18 and 19 have been amended to better define the invention and to correct for a typographical errors. Applicant respectfully submits that the above amendments do not add new matter to the application and are fully supported by the specification. Support for the amendments may be found at least in Figure 2, and at page 15, lines 4-15 of the specification.

In view of the above amendments and the following Remarks, Applicant respectfully requests reconsideration and timely withdrawal of the pending objections and rejections for the reasons discussed below.

***Rejections Under 35 U.S.C. § 102***

Claims 12, 15, 16 and 19 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U. S. Patent No. 3,861,386 issued to Harris ET AL. ("the '386 patent"). Applicant respectfully traverses this rejection for at least the following reasons.

Without acquiescing to the Examiner's rejection and in order to expedite prosecution of the pending application, the Applicant has amended claim 12 to distinguish over the '386 patent by specifying that the drug delivery device is breath enhanced. In particular, claim 12 has been amended to specify that the "drug delivery mouthpiece is structured and arranged such that a

patient's breathing generates an air flow that follows the air flow path defined by the hollow body and the baffle to deliver a medicament to the patient." Nowhere does the Harris '386 patent teach or disclose a breath enhanced drug delivery device as recited in independent claim 12. Indeed, the Harris '386 patent discloses that the air flow path is generated by a blower. *See* column 6, lines 12-15 and column 8, lines 63 to 68. Moreover, one of ordinary skill in the art would not modify the system of Harris to create a breath enhanced device, as doing so would change the principle of the operation of Harris, thereby preventing a *prima facie* case of obviousness. In *re Ratt*, 270 F. 2d 810, 123 USPQ 349 (CCPA 1959). Therefore, the Examiner's rejection has been rendered moot.

Accordingly, Applicant respectfully requests withdrawal of the 35 U.S.C. § 102(b) rejection of claim 12, 15, 16 and 19. Since none of the other prior art of record discloses or suggests all the features of the claimed invention, Applicant respectfully submits that independent claim 12, and all the claims that depend therefrom, are allowable.

### ***Rejections Under 35 U.S.C. § 103***

Claims 17-18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the Harris '386 patent in view of U. S. Patent No. 4,333,450 issued to Lester ET AL. ("the '450 patent"). Furthermore, claims 20-22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the Harris '386 patent in view of U. S. Patent No. 6,929,003 issued to Blacker ET AL. ("the '450 patent"). Applicant respectfully traverses these rejections for at least the following reasons.

As discussed above, Applicant has amended independent claim 12 by specifying that the drug delivery device is breath enhanced. Nowhere does the Examiner's primary reference, the Harris '386 patent, disclose or suggest such a feature. The Examiner's secondary reference, the Lester '450 patent fails to remedy this deficiency. In particular, the Lester '450 patent requires that the nebulizer be connected to an intermittent positive pressure breathing machine. See column 3, lines 30-40.

Additionally, the Examiner's other secondary reference, the Blacker '003 patent, also fails to remedy the deficiencies of the Harris '386 primary reference. Moreover, one of ordinary skill in the art would not modify the system of Harris '386 to create a breath enhanced device, as doing so would change the principle of the operation of Harris, thereby preventing a *prima facie* case of obviousness. In re Ratt, 270 F. 2d 810, 123 USPQ 349 (CCPA 1959). Therefore, the Examiner's rejection has been rendered moot.

Accordingly, Applicant respectfully requests withdrawal of the 35 U.S.C. § 103(a) rejection of claims 17-18 and 20-22. Since the none of the other prior art of record, whether taken alone or in any combination, discloses or suggests all the features of the claimed invention, Applicant respectfully submits claim 17-18 and 20-22 are allowable.

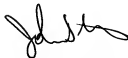
### **CONCLUSION**

Applicant submits that a full and complete response has been made to the pending Office Action and respectfully submits that all of the stated grounds for rejection have been overcome or rendered moot. Accordingly, Applicant respectfully submits that all pending claims are patentably distinct from the prior art of record and are in condition for allowance. The Examiner is thus respectfully requested to pass the above application to issue.

Should the Examiner feel that there are any issues outstanding after consideration of this response, the Examiner is invited to contact the Applicant's undersigned representative at the number below to expedite prosecution. Prompt and favorable consideration of this Reply is respectfully requested. Applicant respectfully requests that a timely Notice of Allowance be issued for this application.

Applicant believes that no extensions of time are required at this time. If extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned for under 37 C.F.R. § 1.136(a). Applicant believes that no further fees for net addition of claims are required at this time. Any fees required for extensions of time and any fees for the net addition of claims are hereby authorized to be charged to our Deposit Account No. 23-1951.

Respectfully submitted,



John S. Hiltten  
Reg. No. 52,518

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McGuireWoods LLP  
1750 Tysons Boulevard  
Suite 1800  
McLean, VA 22102-4215  
Tel: 703-712-5069  
Fax: 703-712-5196  
[jhiltten@mcguirewoods.com](mailto:jhiltten@mcguirewoods.com)

ADT/jmp